

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDWARD J. TAYLOR,	§
	§ No. 228, 2012
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 1105013234
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 1, 2012

Decided: June 15, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

**ORDER**

This 15<sup>th</sup> day of June 2012, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Edward J. Taylor, filed an appeal from the Superior Court's April 13, 2012 order denying his motion to correct an illegal sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

(2) The record before us reflects that, in December 2011, Taylor entered a plea of guilty to Burglary in the Third Degree and Felony Theft. As part of the plea agreement, the State dismissed fourteen other charges, which included a number of burglaries and thefts. Also as part of the plea agreement, Taylor stipulated to his status as a habitual offender, in writing and in open court.<sup>2</sup> He was sentenced to 4 years of Level V incarceration on the burglary conviction and to 2 years at Level V, to be suspended for 18 months at Level III on the theft conviction. Thereafter, Taylor unsuccessfully moved twice in the Superior Court for correction of his sentence.

(3) In this appeal from the Superior Court's denial of his second motion for sentence correction, Taylor claims that his sentence is illegal because the State failed to follow the proper procedures for having him declared a habitual offender. As such, Taylor argues, his sentence may not exceed the maximum 3-year sentence provided by statute for third degree burglary.<sup>3</sup>

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<sup>1</sup> Supr. Ct. R. 25(a).

<sup>2</sup> Del. Code Ann. tit. 11, §4214(a).

<sup>3</sup> Del. Code Ann. tit. 11, §§824 and 4205(b) (6).

(4) Taylor's claim is unavailing. By expressly stipulating to his status as a habitual offender as part of his plea agreement with the State, Taylor waived any claim of alleged error on the part of the State in connection with its habitual offender motion.<sup>4</sup> In any case, Taylor failed to provide the Court with a copy of the guilty plea transcript to support his claim of error on the part of the State in having him declared a habitual offender.<sup>5</sup> In the absence of an adequate record, appellate review of Taylor's claim is precluded.

(5) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>4</sup> *Loncki v. State*, Del. Supr., No. 320, 2006, Berger, J. (Jan. 9, 2007); *Abdul-Akbar v. State*, Del. Supr., No. 447, 1997, Berger, J. (Dec. 4, 1997).

<sup>5</sup> *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987); Supr. Ct. R. 9(e) (ii) and 14(e).